

7 FAM 830

NOTARIAL ACTS IN GENERAL

(CT:CON-151; 01-11-2007)
(Office of Origin: CA/OCS/PRI)

7 FAM 831 NOTARIZING OFFICERS AND NOTARIAL ACTS

7 FAM 831.1 Notarizing Officers

(CT:CON-110; 09-13-2005)

- a. U.S. consular officers and U.S. diplomatic officers may perform all the notarial acts listed in 7 FAM 831.2. Other U.S. citizen employees of the Department designated by the Deputy Assistant Secretary of the Department of State for Overseas Citizens Services under 22 CFR 92.1(d) should see 7 FAM Exhibit 826 for guidance about U.S. state laws on persons authorized by the laws of the states to perform notarial acts abroad.
- b. Because the performance of notarial acts is essentially a consular function, diplomatic officers ordinarily should perform them only if a consular officer or other U.S. citizen employee designated to perform notarial functions is not available.
- c. An officer who is assigned in a dual diplomatic and consular capacity should perform notarial acts in his or her consular capacity.

7 FAM 831.2 Notarial Acts Authorized Abroad

(CT:CON-110; 09-13-2005)

Notarial acts that may be performed by notarizing officers abroad include:

- (a) Taking **acknowledgments** of signatures on documents for use in the United States (such as deeds, powers of attorney) (see 7 FAM 840);
- (b) Administering oaths or affirmations to people executing **affidavits** (see 7 FAM 850);

- (c) Certifications of True Copies of documents (not acceptable in many U.S. states. See 7 FAM 860);
- (d) Taking acknowledgments and verifications on trademark applications (15 U.S.C. 1061) (see 7 FAM 884);
- (e) Taking acknowledgments of transfers of copyright ownership (17 U.S.C. 204) (see 7 FAM 885);
- (f) Taking the oath of a patent applicant that he or she believes himself or herself to be the original and first inventor and concerning his or her nationality (35 U.S.C. 115) (see 7 FAM 883); and
- (g) Taking the acknowledgment of the execution of an assignment, grant or conveyance of a patent or an application for a patent (35 U.S.C. 261) (see 7 FAM 883).

7 FAM 832 PLACE OF NOTARIZATION

(CT:CON-110; 09-13-2005)

Notarizing officials may perform notarial acts only within the boundaries of the consular district. Generally, such acts should be performed at the consular office. They may be performed elsewhere if required by the circumstances of a particular case and if the request is reasonable, provided that the appropriate fees are charged for consular time and travel expenses under the Schedule of Fees for Consular Services in 22 CFR 22.1.

7 FAM 833 ELIGIBILITY FOR NOTARIAL SERVICES

(CT:CON-151; 01-11-2007)

- a. **Documents For Use in the United States:** You generally must perform notarial acts for any person regardless of nationality if the document to be acknowledged, sworn to under oath, or affirmed is for use within the United States.
- b. **Documents For Use in Third Countries:** You also may perform notarial acts for documents to be used in countries with which the United States has formal diplomatic and consular relations if:
 - (1) You have reason to believe that the notarial act will be recognized in the country where it is intended to be used;

- (2) The notarial act is legally necessary and the applicant would suffer loss or be seriously inconvenienced if you did not perform it; and
 - (3) Your notarial certificate will be used for a well-defined purpose, and there is no apparent irregularity.
- c. The notarial certificate may require further authentication for use in such a third country. The U.S. Department of State Authentications Office may authenticate notarial certificates.
- d. **Documents For Use In Countries Occupied By or Under Administrative Jurisdiction of the United States:** You also may perform notarial acts for documents to be used in countries occupied by the United States or under its administrative jurisdiction, if you have reason to believe that the notarial act will be recognized in the country where it is intended to be used.
- e. *Affidavits of Eligibility to Marry: See 7 FAM 1455.*

7 FAM 834 REFUSALS AND WAIVERS OF RESPONSIBILITY

(CT:CON-110; 09-13-2005)

- a. You should refuse requests to perform notarial acts only after careful deliberation. You must report each refusal in detail to the Department, clearly giving the reasons for the refusal. The report must bear the TAGS identifier: CJAN; the subject: NOTARIAL REFUSAL; and the caption: CA/OCS/PRI. You should also enter the fact of the notarial refusal in the ACS/ACS+ (American Citizens Services) system. Questions about such services may also be directed to CA/OCS/PRI at ASKPRI@state.gov.
- b. You **must refuse** to provide a notarial act if:
 - (1) **Prohibited by Treaty or Foreign Law:** An applicable treaty or host country law does not authorize performance of the act.
 - (2) **Prohibited by U.S. Law:** The notarial act is for use in a transaction, which is prohibited by law or by regulation of the United States Government. The Department (CA/OCS/PRI) will advise posts of regulations that prohibit notariats, promulgated in accordance with the **Trading With the Enemy Act (TWEA)** (50 U.S.C. App.) and the **International Emergency Economic Powers Act (IEEPA)** (50 U.S.C. 1701). For example, in 1980 the Department issued a regulation that temporarily ordered the refusal

of notarials in connection with financial transactions of Iranian nationals, based upon the TWEA and IEEPA.

- (3) **Blank Documents:** The document is completely blank. Occasionally you may be asked to notarize a partially blank document because a specific fact or figure is not available when the person is executing the notarized document before you. You may provide the service only if you include a specific waiver stating which elements of the document were blank when the document was executed before you. See 7 FAM 834 (f).

c. **Inimical to the Best Interests of the United States:** You should refuse to perform a notarial act if:

- (1) If you have grounds for believing that the notarial act will be used for a purpose that is patently unlawful, improper or inimical to the best interests of the United States. Examples of documents that you should not notarize for this reason include, but are not limited to:
 - (a) Any documents related to World Service Authority “passports” or similar documents (see 7 FAM 895);
 - (b) Any documents from “14th Amendment Protestors” stating that the United States has no jurisdiction over them, that they are their own sovereign nation, that they have universal immunity, or self-declared nationality, or similar statement (see 7 FAM 896);
 - (c) Any documents that purport to relate to relinquishment or renunciation of U.S. citizenship, transfer allegiance or claim immunity. Under section 349(a)(5) of the INA, as amended (8 U.S.C. 1481(a)(5)), a formal renunciation of nationality may be made before a diplomatic or consular officer of the United States in a foreign state, only in such form as may be prescribed by the Secretary of State. See 7 FAM 1200 on renunciation; and
 - (d) Instruments relating to liquidation of financial assets of a person who is the subject of an extradition request.
- (2) **Comprehension:** If the person requesting the notarial service does not appear to be capable of understanding the implications of the transaction, or appears to be acting under duress.
- (3) **Disqualifying Interest:** You have a disqualifying interest in a transaction in connection with which notarial services are

requested. You have a disqualifying interest if you have a financial or other interest in the transaction. If you have a disqualifying interest, someone else must provide the notarial service.

- d. **Waiver of Responsibility:** If you have reason to believe that material statements in a document presented for notarization are false or have reason to doubt the legality of the use to which the document will be put and, if there is no other basis for refusing the notarial service, you may inform the applicant that the service can be performed only with a specific waiver of responsibility included in the notarial certificate. You should not use this waiver routinely. The language of the waiver should be along the following lines:

Waiver of Responsibility:

"I, (Name and Title of Consular Officer) assume no responsibility for the truth or falsity of the representations which appear in the foregoing (or, annexed) document (or specified elements of the document)."

7 FAM 835 THRESHOLD QUESTIONS

(CT:CON-110; 09-13-2005)

- a. **Applicable U.S. State Requirements:** You should, if possible, determine the requirements of the jurisdiction in which the acknowledged or sworn/affirmed document is to be used and whether they can be met. For example, not all states of the United States will accept certificates of acknowledgment executed by notarizing officials other than consular officers. See 7 FAM 826 for a state-by-state list of acceptable notarizing officials. Consult CA/OCS/ACS and CA/OCS/PRI (ASKPRI@state.gov) for advice as needed
- b. **Personal appearance:** You **must** require the personal appearance of the person requesting the notarial service.
- c. **Identity.** You must establish the identity of the person requesting the service. You should require some reliable evidence of identity, such as a passport or identity card. Social Security cards are not reliable proof of identity. An identification card with a photograph is preferable to one without a photograph. If the proof of identity offered is of doubtful quality, more than one specimen should be requested. You should compare the signature on the notarial act to the signature(s) on the identification card(s) or documents.

- d. Establish that the person:
 - (1) Understands the nature and language of the instrument;
 - (2) Is able to comprehend the significance of the act; and
 - (3) Is not acting under duress, if the person's behavior suggests incompetence, instability, or duress, you should decline to perform the requested act until after consulting the Department (CA/OCS/ACS). See 7 FAM 839 on Individuals Who Have Disabilities or Lack Capacity.
- e. Consider whether any other ground for refusal exists. See 7 FAM 834.

7 FAM 836 PREPARATION OF LEGAL DOCUMENTS

(CT:CON-110; 09-13-2005)

- a. **By Attorneys:** A notarizing officer should not question the form of a document prepared by an attorney for signature unless the form is obviously incorrect. For example, if the form asks for the date of expiration of a notary public's commission, which does not apply to consular officers, or otherwise does not include the correct venue regarding the name of the post, it is incorrect.
- b. **By Notarizing Officers:** A notarizing officer must not draft legal documents for private persons. If asked to draft a legal document, you should explain that:
 - (1) The preparation of legal forms is normally the task of an attorney;
 - (2) The forms used and the purposes for which they are used vary widely from one jurisdiction to another; and
 - (3) You are precluded by the Department's regulations from preparing legal documents for private parties (see 22 CFR 92.81(a); 22 CFR 92.11(b)), "except when instructed to do so by the Secretary of State, or in cases of emergency when the interests of the United States Government might be involved, or in cases in which no lawyer is available and refusal to perform the service would result in the imposition of extreme hardship upon a United States citizen."
- c. **Requests for copies of blank legal forms:** A person who wishes to

have a legal document prepared may be directed to available reference material, such as Jones Legal Forms, or comparable on-line resources.

- d. **Legal Advice:** The requester can be referred to the following:

ABA Lawyer Referral Services

Martindale-Hubbell Law Directory

ABA Standing Committee Lawyer Referral and Information Service

- e. **On-Line Access To Legal Reference Material For Posts Abroad:**

U.S. embassies and consulates can obtain on-line access to Lexis-Nexis (which includes linkage to Martindale-Hubbell) from the Department of State Library Lexis Nexis Clients.

- f. **Typing Documents:** On the rare occasion when a document is typed at the post, the appropriate fee specified in the Schedule of Fees for Consular Services should be collected.

7 FAM 837 NOTARIAL CERTIFICATES

7 FAM 837.1 Generally

(CT:CON-110; 09-13-2005)

- a. A notarizing officer must prepare a written certificate attesting to the performance of a notarial act. You must insert or append the certificate to the notarized document. Without the certificate, the notarial act is legally invalid.
- b. You must prepare a separate certificate for each notarial act. The form of certificate will vary, depending on the nature of the act. See 7 FAM 840 for acknowledgements and attestations; see 7 FAM 850 for affidavits. However, the rules that apply to venue, signing, and sealing are common to all notarial certificates.

7 FAM 837.2 Venue

(CT:CON-110; 09-13-2005)

- a. The venue on a notarial certificate signifies the place where the certificate is executed. The venue must be shown on all notarial certificates to establish the qualifications and authority of the notarizing officer to perform the notarial act. The venue consists of these elements (see

examples in parentheses):

- (1) Name of country (Canada);
 - (2) Name of province (Province of Ontario);
 - (3) Name of city (City of Ottawa); and
 - (4) Name of Foreign Service post (Embassy of the United States of America).
- b. When a notarial act is performed **outside an embassy or consulate**, the venue should list the name of the consular district rather than the post, as follows:
- (1) Name of country (Republic of Italy), and
 - (2) Name of consular district (District of the Consular Section of the Embassy of the United States of America at Rome).
- c. When a notarial act is performed at a **post which has not been designated officially as an embassy, consulate general, consulate, or consular agency**, the venue should read “Consular Service of the United States of America,” rather than the name of the post. For example:
- (1) Name of country (Confederation of Switzerland);
 - (2) Name of province (Canton of Geneva);
 - (3) Name of city (Geneva); and
 - (4) Name of Foreign Service post (Consular Service of the United States of America).
- d. When a notarial act is performed at a **U.S. Interests Section**, the venue should read:
- (1) Name of country (Cuba);
 - (2) Name of city (Havana);
 - (3) Name of protecting power (Embassy of Switzerland); and
 - (4) Name of Foreign Service post (United States Interests Section).
- e. **Rubber Stamps:** You may find it useful to expend post administrative funds to obtain a rubber stamp that prints the wording of the venue.

7 FAM 837.3 Signing and Sealing

(CT:CON-110; 09-13-2005)

- a. The notarizing officer should sign on the lower right side of the notarial certificate. Your signature should correspond with your specimen signature on file in the Department. Your name and full official title should be typed, stamped with a rubber stamp, or printed in ink on two separate lines just below your signature. When you are assigned to a post in both a diplomatic and consular capacity, use your consular title in the certificate. You may not use a rubber stamp signature or a signature machine; you must provide an original signature.
- b. You should apply the embossed seal of the post on the lower left side of the certificate.

- (1) A certificate prepared at a **diplomatic post, consular agency, or a special overseas post**, other than a U.S. Interests Section, should be sealed with an embossed seal bearing the legend:

Consular Service of the United States (City) (Country)

- (2) A certificate prepared at a **consulate general or consulate** should be sealed with an embossed seal bearing the legend:

Consulate General (or Consulate) of the United States of America (City) (Country)

- (3) A certificate prepared at a **U.S. Interests Section** should bear the legend:

Embassy of (Switzerland) Interests Section of the United States of America (City) (Country)

- (4) **Use of Rubber Stamp Seal:** On preprinted certificates supplied by the person who requests the notarial or on certificates for machine tabulation, the notarizing officer may honor a request that the rubber seal rather than the embossed seal be used on the certificate.

7 FAM 837.4 Fastening Pages

(CT:CON-110; 09-13-2005)

- a. When the instrument or document to which a notarial act relates consists of more than one sheet, or when the notarial certificate will be attached and not written on the document itself, you should bring all of the pages the document together under your official seal.
- b. This is best done by perforating each of the pages, including the notarial certificate, in the upper left corner, inserting eyelet grommets, and imprinting the embossed seal of the post on the notarial certificate, which is the first page of the set of documents (or the last page of the document where a preprinted or rubberstamped certificate is used).
- c. The affiant or acknowledger should initial each page of a multipage document, and the total number of pages should be indicated on the consular certificate or on the last page of the instrument where no separate certificate is used.
- d. You should initial the first page of a multipage document with a notation along the following lines: "This document consists of three pages, each initialed by the affiant/acknowledger."
- d. Ribbons, wafer seals and wax are not generally used any longer, and you should use them only if the Department (CA/OCS/ACS or CA/OCS/PRI) specifically instructs you to do so.

7 FAM 838 CHECKLIST

(CT:CON-110; 09-13-2005)

Notarial Requester Must	Notarizing Officer Must
Appear personally before the notarizing officer.	Be satisfied as to the requester's identity (Personal Identity/Corporate Identity) (See 7 FAM 1320 Identity)
Bring a Photo ID	
Pay required fees. See 22 CFR 22.1	
	Be satisfied requester understands the document;

	Be satisfied requester is acknowledging his or her signature freely and willingly. For example, interview married persons separately;
	Review request for possible basis for refusal. (7 FAM 834) If notarial is refused, report matter by telegram and enter pertinent data in ACS system.
	Administer oath or affirmation if required.
	Provide notarial certificate.
	Collect applicable consular fees (22 CFR 22.1).
	Provide receipt, whether or not a fee is charged for record keeping purposes.

7 FAM 839 REQUESTERS WHO HAVE PHYSICAL DISABILITIES OR MAY LACK CAPACITY

7 FAM 839.1 Physical Disabilities

(CT:CON-110; 09-13-2005)

- a. **Visually Disabled Persons:** Ideally, a sightless or visually impaired person's attorney will prescribe notarial procedures that protect the client's interests. The notarizing officer must make sure that the blind or visually impaired person understands the contents of any instrument to be executed. You should read the document, or have the document read, aloud to the visually impaired person, and ask whether the person understands the document and/or has any questions about its meaning. The notarial certificate should reflect the special procedures employed for the notarial act. For example: Today, Thomas Martin personally appeared before me and was read aloud the annexed instrument. Having established that he understood the contents of the document, I executed an acknowledgment of his signature on the document." Questions about such situations may be directed to CA/OCS/PRI at ASKPRI@state.gov.

- b. **Hearing Disabled Persons:** Ideally, a deaf or hearing impaired person's attorney will prescribe notarial procedures that will protect the client's interests. The notarizing officer must make sure that the deaf person understands the contents of any instrument to be executed. You should have the person read the document in your presence. You should then ask the hearing impaired person in writing whether he or she understands the document and/or has any questions about its meaning. The notarial certificate should reflect the special procedures employed for the notarial act. For example: "Today, Alice Walker personally appeared before me and read the annexed instrument in my presence. Having established through written questions that she understood the contents of the document, I executed an acknowledgement of her signature on the document." Questions about such situations may be directed to CA/OCS/PRI at ASKPRI@state.gov.
- c. **Speech Disabled Persons:** When a person is mute or physically unable to speak, he or she may respond in writing to the consular officer's questions concerning identity, competence, and understanding. The notarial certificate should reflect the procedures employed for the notarial act. For example: "Today, Mary Smith personally appeared before me, established her identity, competence to execute a notarial act, and understanding of the document hereto annexed by virtue of her written responses to standard questions put to her. She acknowledged her signature on the annexed document." Similarly, a speech-impaired person should be allowed to take an oath or affirmation by responding in writing. Questions about such situations may be directed to CA/OCS/PRI at ASKPRI@state.gov.
- d. **Persons Unable to Sign:** When a person is physically unable to sign a notarial instrument or make an identifying mark, the impaired person should give oral responses in the presence of two consular officers, who should then attest to the manner in which the notarial was taken.

NOTE: -- At a small post with only one consular officer, or where the second consular officer is away on official business or annual leave, a diplomatic officer may act in place of the second consular officer. Questions about such situations may be directed to CA/OCS/PRI at ASKPRI@state.gov.

7 FAM 839.2 Mental Incapacity

(CT:CON-110; 09-13-2005)

Although notarizing officers are not competent to form a medical opinion as to a person's mental capacity, you should use common sense in assessing a

person's competence to make an acknowledgement or attestation, or to make an oath or affirmation. For instance, you should not permit a person who does not appear to be able to understand the nature or significance of a notarial act, whether due to inebriation or an apparent state of confusion, to do so. Questions about such situations may be directed to CA/OCS/PRI at ASKPRI@state.gov

7 FAM 839.3 Minority

(CT:CON-110; 09-13-2005)

In performing a notarial service for a minor (a person under the age of 18 years), the notarizing officer must be satisfied that minor understands the nature of the act and is performing it voluntarily. Generally a person under the age of 14 cannot legally make an acknowledgment or attestation or take an oath or affirmation. State law varies on this subject. Questions about such situations may be directed to CA/OCS/PRI at ASKPRI@state.gov.

7 FAM 839.4 Illiteracy

(CT:CON-110; 09-13-2005)

A persons who is unable to read or write may execute a notarial by making a mark, provided that the notarizing officer reads the document to him or her and is satisfied that the requesting party understands the nature of the act. The notarial certificate should reflect these procedures. Questions about such situations may be directed to CA/OCS/PRI at ASKPRI@state.gov.

Note: In all situations discussed in 7 FAM 839, requesters should consult legal counsel in the state or other U.S. jurisdiction where the document will be used or their state Notary Public Administrator to attempt to confirm the procedures that acceptable in their state. You may also request our assistance in contacting state officials. You can contact us at ASKPRI@state.gov.